

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

Kern River Gas Transmission Company

Docket Nos. CP01-31-002;
CP01-31-000 and CP01-31-001

ORDER DENYING REHEARING

(Issued October 24, 2001)

On August 27, 2001, the Firm Customers filed a request for rehearing of the Commission's July 26, 2001 order authorizing Kern River Gas Transmission Company (Kern River) to construct and operate its 2002 Expansion Project.¹ The Firm Customers contend that the Commission erred in approving the 2002 Expansion Project because allowing the sale of additional primary firm delivery point rights at the Wheeler Ridge delivery point will result in further pro rata reductions in capacity for existing shippers and diminish their rights. In the alternative, the Firm Customers contend that the Commission should make the delivery point rights of expansion shippers at Wheeler Ridge subordinate to those of existing shippers until Southern California Gas Company (SoCalGas) builds enough take-away capacity to satisfy the constraints at Wheeler Ridge. For the reasons discussed below, the request for rehearing is denied.

Background

Kern River's pipeline system extends from receipt points in Wyoming to the San Joaquin Valley near Bakersfield, California in Kern County. At its terminus in Kern County, Kern River has a number of delivery points serving enhanced oil recovery and associated cogeneration markets. In addition, at its Daggett and Wheeler Ridge delivery points, Kern River interconnects with the two major California gas distributors, Pacific Gas & Electric Company and Southern California Gas Company, respectively.

¹Kern River Gas Transmission Company, 96 FERC ¶ 61,137 (2001).

On November 15, 2000, Kern River filed an application pursuant to section 7(c) of the Natural Gas Act and Subpart A of Part 157 of the Commission's regulations for a certificate of public convenience and necessity to construct and operate facilities to provide long-term firm transportation from Wyoming to California (the 2002 Expansion Project). Specifically, Kern River proposed to construct and operate additional compression and metering facilities that would expand its system capacity to serve 124,5000 Dth per day of new, firm, long-term contractual obligations commencing May 1, 2002.

On March 15, 2001, while the 2002 Expansion Project was pending Commission approval, Kern River filed an application in Docket No. CP01-106-000 (the California Action Project) seeking approving of a compression-only system expansion that would eliminate the need for the compression facilities originally proposed for the 2002 Expansion Project. The California Action Project would provide 114,000 Mcf per day of expansion capacity for a 10-month term expiring April 30, 2002 (when the 2002 Expansion Project service takes effect), and 21,000 Mcf per day of expansion capacity for a 22-month term expiring April 30, 2003. On April 6, 2001, the Commission issued a certificate for the California Action Project.²

On May 11, 2001, Kern River filed an amendment to its application to reflect in the design of the 2002 Expansion Project the approval of Kern River's California Action Project. In the amended application, Kern River proposed to construct and operate only the remaining compression and metering facilities necessary to provide an additional 10,500 Mcf per day of capacity. On July 26, 2001, the Commission issued a certificate for the 2002 Expansion Project.

Discussion

In its request for rehearing of the Commission's July 26, 2001 order the Firm Customers contend that, in finding that the 2002 Expansion Project could potentially increase the exposure of existing firm shippers' primary nominations to the Wheeler Ridge delivery point to pro rata allocations, the Commission disregarded the fact that such curtailments have, in fact, actually taken place, and that approval of the 2002

²95 FERC ¶ 61,022 (2001). The Firm Customers also sought rehearing of the April 6, 2001 order, raising the same issues presented here. Concurrent with this order, we are also issuing an order in that docket denying rehearing. The reasoning set forth in the order on rehearing in that docket is equally applicable to the instant order on rehearing.

Expansion Project may lead to additional curtailments.³ The Firm Customers request that the Commission rule that Kern River is not permitted to sell additional primary firm capacity at Wheeler Ridge. Alternatively, the Firm Customers contend that if the Commission permits Kern River to sell additional firm delivery point rights at Wheeler Ridge, the expansion shippers' rights should be subordinated to the existing firm customers' primary delivery point rights.⁴

We disagree with the arguments raised by the Firm Customers' and deny their request for rehearing for the reasons set forth below.

The Commission evaluated Kern River's application to construct and operate the 2002 Expansion Project in accordance with the Commission's September 15, 1999 Policy Statement setting forth guidance for the consideration of proposals to certificate new construction. As explained in greater detail in our July 26, 2001 order, the Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of the unnecessary exercise of eminent domain or other disruptions of the environment.

In applying the Policy Statement to Kern River's proposal, the Commission found that although the proposed project could potentially increase the exposure of existing firm shippers' primary nominations at Wheeler Ridge to pro rata allocations, the benefits of the project outweighed any potential adverse impact to existing customers, given the critical need for expansions of pipeline capacity to serve the electric and natural gas infrastructure in California. Accordingly, the Commission concluded that the 2002 Expansion Project was required by the public convenience and necessity, and issued a certificate to Kern River authorizing the project.

³The Firm Customers filing for rehearing consist of Aera Energy, L.L.C., Amoco Production Company, CanWest Gas Supply Inc., Chevron U.S.A. Inc., PME Petroleum Company, and Texaco Natural Gas Inc.

⁴The Firm Customers stress that they support the expansion of Kern River's system. Their opposition is limited to the sale of additional primary firm delivery point rights.

The Firm Customers challenge one element of the Commission's balancing of public benefits against potential adverse consequences. They contend that curtailments at the Wheeler Ridge delivery point are actually, and not potentially, taking place and that allowing Kern River to sell additional firm delivery point rights at Wheeler Ridge is likely to exacerbate this situation, thus diminishing their rights at that point.

The Firm Customers argument adds nothing new to the Commission's consideration of this issue in its July 26, 2001 order. As we stated there:

The Commission agrees with the Firm Customers and Sempra, as does Kern River itself, that the existing aggregate upstream delivery capacity to Wheeler Ridge already exceeds the downstream take-away capacity on SoCalGas' system. Therefore, it is likely that increasing the number of shippers and volumes brought to an already constrained point would add to the congestion at the constraint, and potentially result in more of Kern River's existing firm primary shippers' gas being unable to flow through the constraint, if pro rata allocations are imposed or increased.

Thus, the Commission recognizes that Kern River's existing firm services could be adversely affected by this proposed additional expansion of Kern River's system capacity. However, as discussed below, given that Kern River's proposal does not violate our rulings in *Amoco v. El Paso*, and given the nature of the harm and the existence of countervailing policy considerations, the Commission does not find the potential for additional curtailment at Wheeler Ridge to be a sufficient reason to prohibit the sale of additional firm delivery point rights at that point by Kern River, or to give expansion shippers delivery point rights at Wheeler Ridge inferior to those of existing shippers.⁵

As demonstrated by the quoted language, the Commission considered below the concerns expressed by the Firm Customers on rehearing. The Commission acknowledged that the aggregate upstream delivery capacity to Wheeler Ridge already exceeds the downstream take-away capacity and that increasing the number of shippers and volumes brought to Wheeler Ridge by the 2002 Expansion Project is likely to add to the

⁵96 FERC ¶ 61,137, at 61,585 (emphasis added)(footnote omitted).

congestion at that point. The Commission specifically took into account the concern raised by the Firm Customers on rehearing - - that pro rata allocations are actually occurring, and might increase as a result of approval of the 2002 Expansion Project. With full knowledge of this situation, the Commission nonetheless found that, on balance, the public interest required approval of the proposed project.⁶

The Firm Customers also contend that Kern River has an obligation to ensure that its firm customers are not subject to reductions in scheduling for reasons other than force majeure conditions, and that to permit Kern River to sell primary firm delivery point rights at Wheeler Ridge that exceed SoCalGas' take-away capacity contravenes the Commission's regulations and its ruling in Amoco v. El Paso.⁷ The Firm Customers add that the firm customers who signed contracts with Kern River providing primary firm delivery point rights at Wheeler Ridge in the early 1990s had no idea that scheduling cuts would occur since there was ample take-away capacity on SoCalGas' system at that time. In contrast, because scheduling cuts have become an issue in the past couple of years, the expansion shippers who signed new contracts with Kern River in the past year can be said to have assumed the risk of scheduling cuts at Wheeler Ridge.

As we explained in our July 26, 2001 order, Kern River has the ability to meet all of its contractual obligations to deliver gas to Wheeler Ridge, including the 2002 Expansion Project contractual obligations, and therefore, has not oversold its share of the

⁶We emphasize in this regard that the Commission was explicitly aware of the periodic curtailments in question. As stated in the July 26, 2001 order: "The Firm Customers state that there have been periodic curtailments at the Wheeler Ridge delivery point. Further, in the California Expansion Project proceeding in Docket No. CP01-106-001, the Firm Customers submitted affidavits on rehearing showing that in recent months they have been subject to scheduling cuts of firm service as high as 50 percent at the Wheeler Ridge delivery point." *Id.* at 61,583, fn. 72. Similarly, the Commission explained in the body of the order that "Kern River's existing firm shippers have been experiencing pro rata allocations of their firm delivery rights by Kern River, and may be subject to further cuts as a result of the California Action Plan and this 2002 Expansion Project." *Id.* at 61,587 (footnotes omitted).

⁷*Amoco Energy Trading Corp. v. El Paso Natural Gas Co.*, 93 FERC ¶ 61,060 (2000), Order on Clarification and Granting Extension of Time, 93 FERC ¶ 61,222 (2000).

design capacity of Wheeler Ridge in violation of Amoco v. El Paso.⁸ That conditions at Wheeler Ridge may have changed since certain firm customers signed contracts in the early 1990s does not alter the fact that Kern River has met its responsibilities under the NGA and Commission precedent.

The Firm Customers argue next that the delivery point rights of the new customers should be subordinated at Wheeler Ridge to the rights of existing customers. The Firm Customers contend: (1) that the Commission incorrectly applied its precedent in concluding that subordination of the expansion shippers' rights was improper in this case; (2) there is no evidence that assigning expansion shippers inferior rights could jeopardize future expansions; and (3) there is no basis for the Commission's conclusion that subordination could provide an unfair competitive advantage to existing shippers.

This issue was also considered by the Commission in its balancing of public benefits against potential adverse consequences in the July 26, 2001 order. Acknowledging a number of factors bearing on this issue, including the fact that the solution to the problem of pro rata curtailments at Wheeler Ridge lies not with interstate pipelines, but with resolving the problems of take-away capacity on SoCalGas and the lack of assigned firm rights on SoCalGas' backbone system, the Commission declined to require Kern River to create a new class of firm delivery rights at Wheeler Ridge that would be subordinate to the primary and secondary rights of existing firm shippers.

In rejecting the first point raised by the Firm Customers', the Commission held that although it has required the sale of certain types of firm service to be subordinate to preexisting shippers' firm rights, in those cases, the new services were proposed as less than absolutely firm, and the new customers electing such rates were not paying the same rate as the existing customers were for their firm service.⁹ The Firm Customers argue that this distinction is unavailing because the new service in the instant case is not absolutely firm either given the scheduling uncertainty at Wheeler Ridge.

⁸96 FERC ¶ 61,137 at 61,586.

⁹Id. at 61,588-89.

This argument is unpersuasive. Section 284.7(a)(3) of the Commission's regulations, 18 C.F.R. § 284.7(a)(3), defines firm service as follows: "Service on a firm basis means that the service is not subject to a prior claim by another customer or another class of service and receives the same priority as any other class of firm service." That the firm service at issue here may be, or is in fact, subject to pro rata allocations from time to time does not change the fact that it is not subject to a prior claim by another customer or another class of service and receives the same priority as any other class of firm service.

The Firm Customers' argument that there is no evidence that assigning expansion shippers inferior rights could jeopardize future expansions is similarly unpersuasive. Logic dictates that changing contractual agreements and assigning expansion shippers inferior delivery point rights clearly could place them at a competitive disadvantage and limit their ability and willingness to participate in project expansions.

Finally, as to the Firm Customers claim that there is no basis for the Commission's conclusion that subordination could provide an unfair competitive advantage to existing shippers, the Firm Customers have presented no argument that changes our conclusion that assigning a higher priority to Wheeler Ridge capacity to existing shippers would lock in a competitive preference for Kern River's existing customers. The Firm Customers' argument, that Kern River's failure to satisfy its existing firm contractual obligations to existing shippers provides a disincentive to long-term contracting and creates an unfair competitive advantage for new shippers, does not hold up. Kern River has satisfied its obligations to its customers by increasing the design delivery capacity of the Wheeler Ridge Meter Station; the current lack of intrastate capacity cannot be laid at its door. In addition, we note that the take-away capacity apparently has been inadequate only at limited times, and that when it is, Kern River has followed the existing scheduling procedures in its tariff to allocate the capacity on a pro rata basis. Finally, as we noted in our July 26, 2001 order, since other entities have gas supplies transported to Wheeler Ridge on facilities other than those owned by Kern River, the requested restriction on Kern River would not ensure against pro rata allocations for Kern River's shippers.¹⁰

The Commission orders:

¹⁰Id. at 61,588, fn.68.

The request for rehearing filed August 27, 2001, in this docket, is denied.

By the Commission. Commissioner Breathitt concurred with a separate
statement attached.

(S E A L)

Linwood A. Watson, Jr.,
Acting Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Kern River Gas Transmission Company

Docket No. CP01-31-000
CP01-31-001
CP01-31-002

Breathitt, Commissioner, concurring:

(Issued October 24, 2001)

I have written separately concerning Kern River's recent expansions in order to highlight what I consider to be an important issue: how FERC should respond to applications for interstate pipeline expansions when intervenors allege there is insufficient take-away capacity to ensure that additional gas supplies reach the markets where they are needed. I will not recite my every concern with how the Commission has addressed the parties' allegations of congestion at Wheeler Ridge and the potential effects of increasing interstate capacity at that point. In fact, I am pleased that, over the past six months, the Commission has come to acknowledge that our actions in certifying the Kern River expansions could exacerbate the problems of delivering natural gas to end-users in Southern California. More importantly, the Commission has recognized that the potential degradation of shippers' firm rights resulting from the certification of additional interstate capacity is an appropriate factor in the public benefits analysis the Commission uses to determine whether a project is in the public convenience and necessity.

I am relieved that certain events are occurring in California that will mitigate congestion at Wheeler Ridge. More take-away capacity is on the horizon, and the California Public Utilities Commission is considering certain regulatory relief that will facilitate the transportation of natural gas from Wheeler Ridge to the Southern California markets. Nonetheless, I remain uneasy about the strident policies the Commission has advanced in favor of certification of interstate capacity despite the insufficiency of take-away capacity, and particularly, the confidence with which the Commission has rejected the legitimate concerns of shippers on Kern River's system.

I am issuing a concurring opinion today to urge that we not lose sight of the panoply of issues we must consider in issuing natural gas pipeline certificates. In these times, there is great emphasis on expanding and improving our Nation's energy infrastructures. I most certainly share the sense of urgency to ensure adequate and reliable energy supplies. However, there is more to the Commission's mandate under the Natural Gas Act than simply getting more pipe in the ground. We must ensure that the pipeline facilities we certificate have the desired effect of bringing additional supplies to

the areas where they are needed. We also must ensure that we take into account the potential for unused facilities, stranded costs, and unwarranted disruption of property rights and the environment.

The Commission has come a long way this year in understanding the physical constraints and regulatory impediments to natural gas transportation in California, but there is much to be done. We will revisit issues concerning the adequacy of take-away capacity in Kern River's pending certificate application in CP01-422-000. I will continue to advocate a thoughtful and coordinated approach to fostering badly needed interstate and intrastate expansion in California.

Linda K. Breathitt
Commissioner